

Minutes of the October 12, 2005 meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Jean Ginn Marvin; Hon. Michael T. Bigos; Hon. Vinton E. Cassidy; Hon. Andrew Ketterer. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

At 9:05 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of the September 21, 2005 meeting

Mr. Ketterer moved to accept the minutes of the September 21, 2005 meeting, Mr. Bigos seconded, and the Commission voted unanimously (4-0) to ratify the minutes of September 21, 2005 meeting.

Agenda Item #2 – Proposed Guidelines for Maine Clean Election Act Expenditures

The director reiterated that at the last meeting there were questions concerning the spending of public funds for lodging. The director explained this was of particular concern for candidates campaigning far from their homes and who wanted to be able to use public funds for overnight lodging instead of driving all the way home. The director then deferred to Senator Paul Davis who was present at the meeting to speak to the Commission on these guidelines.

Senator Paul Davis Senate District #27 took the floor and said that he had some issues with what was said in a newspaper article he had read concerning the use of public funds. He explained how large District 27 was and went on to explain how far it was for him to get to most places. He explained that there were a number of activities that went on every year near the Baxter State Park area that most candidates went to. He continued by saying that this trip was usually a long, very expensive one and that with the prices of gas as high as they were today it was even more expensive now. He explained that he was fortunate enough to have friends that live in the area so he was able to stay over at their place; but most other candidates didn't have that option and if they had to stay overnight they should be able to use public funds and call it an expense.

Mr. Ketterer thanked Senator Davis for coming and asked him if he had any recommendations to this dilemma.

Senator Davis replied that he realized it was easier for him to give his opinion on the matter, but not have any recommendations on how to fix it. However, suggested that it be done on a square mile basis. He proposed that a candidate living in one of the southern districts shouldn't need overnight lodging while campaigning, but a candidate

from one of the northern most districts would need that option. He thought, geographically, square miles per district would be the only way to determine if public funds should be used for lodging.

Mr. Ketterer asked Senator Davis if the Commission had a guideline that stated if the primary purpose of the trip was campaign-related, either for mileage or lodging, would it address the issue at hand. Senator Davis agreed that it would. He went on to say that he did not feel it was appropriate to use MCEA funds for out-of-state travel, for example, to stay overnight in Boston for a conference.

Chair Ginn Marvin asked if there were any more questions.

Mr. Bigos thanked Senator Davis for coming in to enlighten the Commission on his views and said that it was important that the Commission got input from Legislative leaders like Senator Davis as it would help them in determining what the best decision would be.

Mr. Bigos went on to say that he was considering three (3) options:

- The first option was the Commission was asked to interpret the statute and issue guidelines and they have an option to address this travel question in the guidelines.
- The second option was to not do anything
- The third option was to suggest to the Legislature that it was an important question that maybe they should look at and clarify for the Commission.

Mr. Bigos then asked Senator Davis what he thought the Commission should do regarding this travel issue. Senator Davis stated that in his opinion he would rather have the Commission resolve this matter because going to the Legislature would only prolong the issue's resolution.

Mr. Bigos then asked Senator Davis if public scrutiny on this issue was currently addressing the problem. Senator Davis replied that it didn't and he thought this was something the Commission needed to resolve. He said if there was no Clean Election Law, there would not be an issue for the Commission. But we do have the Clean Election Law with its restrictions on the use of public funds. He said the Commission should establish fair guidelines for travel. He restated his opinion that there should be some discretion as to who should be allowed to use public funds for lodging; someone who lives in a small district area like Portland doesn't need to stay across town at a hotel as opposed to someone who lives in Washington County and has to go across the county.

Mr. Cassidy then asked Senator Davis what he thought about having a financial cap as well as the geographic locations of the candidates. Senator Davis agreed that there should be a cap on how much a candidate should be allowed to spend on a hotel. He stated his opinion that there should be more of a compensation for the people with larger districts because there is more traveling involved as opposed to someone who has a smaller district. He felt that those candidates sometimes spent \$1,000 to \$1,500 more because they had to travel so much more; possibly these candidates should be given a

travel allowance. He continued by saying that one way for those candidates to get more money would be for them to get more seed money.

Ms. Ginn Marvin asked if there were any other questions for Senator Davis.

The director then stated that he had re-written the proposed guidelines slightly and went over the amendments. He directed the Commission's attention to the clause in the Guidelines on Selected Issues that says, "Candidates may use Maine Clean Election Act funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable." The director asked the Commission members if they thought the changes were suitable.

Mr. Cassidy stated that he thought the only other option would be to put a dollar amount cap on it. Otherwise, he stated that he thought the director's language sounded reasonable.

Mr. Ketterer agreed that he thought the way the director had drafted the clause sounded good. He went on to say that if it was a legitimate campaign expense and the candidate was publicly financed it would be improper to use his/her own money because it would be considered an in-kind contribution. He continued to say that he had a problem with the notion of putting a cap of \$100 on lodging because that would create friction and draw an artificial distinction between the publicly financed and traditionally financed candidates; traditionally financed candidates would be able to spend however much they wanted on lodging and publicly financed candidates would only be allowed to spend \$100.

Mr. Bigos stated that he was in agreement with Mr. Ketterer and that candidates needed to know that only reasonable expenses would be allowed. He went on to say that he thought the Commission was doing a good job of interpreting the guidelines.

Chair Ginn Marvin asked for a motion.

Mr. Ketterer moved to accept the language as drafted for the MCEA candidates in the 2006 election, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to accept the MCEA Expenditures Guidelines as drafted.

### Agenda Item #3 – Definition of Lobbying for Disclosure Purposes

Martha Currier-Demeritt took the floor and reiterated what had been said at the last meeting regarding the definition of lobbying. She stated that she wanted to have a clearer definition as to what lobbying was so she could give better guidance to people who had questions. She stated that most lobbyists who submitted comments disagreed with what the definition of lobbying currently was. Ms. Currier-Demeritt stated that the Commission could choose two different options. The first was to stay with the current guidance but change the monthly reporting form all together to that lobbyists would submit a more detailed breakdown of how they spent their time and their compensation or

take a step back from the broad interpretation and have a narrower interpretation which would be more consistent with the law as written.

Chair Ginn Marvin asked if there were any questions.

Mr. Ketterer asked if a person had testified at a legislative hearing, but didn't follow up on the statement and did not contact anyone after that testimony, then would they be considered a lobbyist. Ms. Currier-Demeritt responded that under the current definition that a person that testified before the legislature would be considered a lobbyist.

Chair Ginn Marvin asked if there were more questions.

Mr. Bigos clarified that the 8 hours is how much time a person has to spend lobbying in order to have to report it to the Commission. Ms. Currier-Demeritt stated that was the case. For example, a person could come down from Aroostook and testify at a hearing, spending an hour at the hearing talking to legislators and then it would fall within the definition of lobbying. Ms. Currier-Demeritt went on to say that even though the person was being compensated to drive all the way down to Augusta, that the time spent traveling should not be included in the time spent lobbying because it was not direct communication.

Chair Ginn Marvin stated that she was still not understanding what was so negative about being labeled a lobbyist was; she understood that in terms of reporting hours it was important, but why it was such a big deal that they should have to count the hours they spend waiting for their bill. Ms. Currier-Demeritt replied that she was unsure, but agreed with most of what Chair Ginn Marvin had said. She stated that she did understand why the lobbyist would not want to count the hours they spent waiting because technically they were not directly communicating with any legislators.

Mr. Bigos asked if the enforcement of proportioning time for each employer was a difficulty or problem now for lobbyists. Ms. Currier-Demeritt stated that it was on the honor system now; she took the hours they reported as the total of hours they had spent lobbying for that month.

The director stated that the Commission staff had talked about the FAQ and their recommendation was to take back some of the proposed advice and just stick with what was in the statute. The director stated that he thought there might be some people in the public that wanted to say something regarding these guidelines; Ms. Currier-Demeritt introduced Brenda Peluso from the Maine Association of Non-Profits.

Brenda Peluso took the floor and stated that she was not a lobbyist nor had ever been one. She stated that her organization provided training on lobbying and that they had a guide that explained Maine lobbying laws and regulations. She continued to say that she contacted the Commission and asked how they interpreted the statute as to what lobbying meant. She stated that one of the issues she was confused with was the non-reporting of travel time; she was under the impression that it was in the law and it wasn't. She stated

that her organization always had issues with travel time because some of their clients lived way up north and had to drive all the way down to Augusta. She affirmed that she kept track of hours spent lobbying, traveling, etc. but that she did count the time spent waiting. She stated that even after doing all that she had mentioned, traveling, phone conversations and research, she still never hit the eight-hour threshold. After looking at the FAQ it became apparent that they had been interpreting and giving advice that was not as accurate as they thought. She went on to say that they wanted to be able to give their point of view; and continued to say that she knew that a lot of other non-profits were leery to be labeled lobbyists because they were still under the impression that non-profits could not be lobbyists. Ms. Peluso continued to say that these people would not come to workshops if the word lobbying was anywhere in the title because they were afraid that they would lose their funding and have to become registered lobbyists.

Ms. Peluso felt that some people who might come to the legislature to testify may decide that they do not want to have to spend the \$200-\$300 to register as a lobbyist and comply with the other requirements. She stated her concern that this may present too high a barrier to those people.

Chair Ginn Marvin asked if there were any questions and called for a motion. Ms. Gardiner confirmed that a motion was necessary.

The staff recommendation was to not include travel time and waiting time, and to really focus on the testimonies given and direct communication with legislators.

It was decided that the Commission staff would draft up new language to present at the November 9, 2005 meeting.

Mr. Ketterer moved to table the item until the November 11, 2005 meeting, Mr. Bigos seconded, and the Commission voted unanimously (4-0) to table the item until the next meeting.

#### Agenda Item #4 – Request for Waiver of Late Filing Penalty/Mark Horton

The director explained that this item was resolved as the Commission had received Mr. Horton's payment.